**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.18813 of 2006

**09.8.2007**

Between:

Annepu Himavantha Rao, S/o.Satyanarayana
And another

…Petitioners

And

Illapurru Gram Panchayat, Illaparru village, Nandiwada Mandal, Krishna District, represented by its Sarpanch
And another

…Respondents

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ORDER:

First petitioner is son of the second petitioner. His father occupied an extent of Acs.0.02 allegedly three decades ago and constructed a thatched house with mud walls for residential purpose for his family. The land is classified as PWD canal bund poramboke. After his father's death, first petitioner succeeded to the property and was staying there with his mother (second petitioner) and his wife. In 2006, thatched house collapsed. He allegedly constructed asbestos roofed shed with cement pillars. When the present sarpanch and her husband tried to dismantle the huts by use of force, he filed O.S.No.537 of 2006 on the file of the Court of Junior Civil Judge, Gudiwada, against Chintadi Saraswathi, and obtained *ad interim* injunction in I.A.No.1738 of 2006. He also filed a police complaint on 01.9.2006 alleging that the order of injunction is violated. It is alleged that the defendants then passed resolution on 04.9.2006 in order to demolish the houses, and filed caveat before the Court of Junior Civil Judge apprehending civil suit. It was alleged in the caveat petition that Gram Panchayat passed resolution to provide a passage across the site to enable prawn culture farmers to go to their lands. Petitioners contend that there are pakka roads on the canals for ingress and egress for all the people. Therefore any interference by the respondents would be illegal, contrary and violative of Section 58 of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity).

This Court while ordering notice before admission ordered *status quo*. The matter was admitted on 10.11.2006 extending interim

orders. The Gram Panchayat moved an application being WVMP No.2095 of 2006. At that stage, petitioners also filed additional documents. Additional affidavits and reply affidavits are already filed. Therefore, the matter was heard finally with the consent of learned Counsel for petitioners and learned Counsel for first respondent - Gram Panchayat.

The case of the Gram Panchayat as stated in the counter affidavit filed along with WVMP as well as the affidavit filed accompanying miscellaneous application to receive additional documents is as follows. The father of the first petitioner never occupied Acs.0.02 of PWD canal poramboke as alleged. No thatched house with mud walls was constructed and petitioners were never in possession of the property. The allegations made regarding collapse of hut and construction of asbestos roofed shed are denied. When there was a demand from the villagers to lay a road from Village puntha to connect the main road by putting cement pipes in the canal, earlier body of Gram Panchayat purchased cement pipes. But the work was not completed. When the work was taken up Sarpanch set up the petitioners to abort developmental activities. Petitioners own Acs.6.00 of land where they are taking up fish culture. They also have a daba house. They managed evidence as if they are in possession of thatched houses and filed the writ petition. Petitioners are now making efforts to take up construction. The Mandal Revenue Officer (MRO) enquired with the Bill Collector, who disclosed that the petitioners got managed in getting the tax receipts.

Learned Counsel for the petitioners submits that puntha poramboke or PWD canal poramboke do not vest in the Gram Panchayat and therefore the first respondent cannot evict the petitioners. He relies on Section 58 of the Act. Secondly he submits that having regard to ample evidence on record to show that the predecessor of the petitioners was in possession of the disputed area, highhanded eviction by the Gram Panchayat is impermissible in law. **Per contra**, learned Counsel for the Gram Panchayat submits that the petitioners were never in possession of the land and they started construction after obtaining interim orders from the Courts. Nextly he contends that in the larger interest of the people of the Gram Panchayat, it is proposed to lay a connecting road/passage to main road through puntha and across PWD canal for convenient use by the number of persons, who have fish/prawn tanks across the puntha. It is his contention that all porambokes and punthas vest in Gram Panchayats and it is always permissible for the Gram Panchayat to take necessary action under law to evict the encroachers.

Petitioners filed house tax receipts issued by the Gram

Panchayat on 27.7.2006 and 28.7.2006 in favour of the father of first petitioner showing that house tax was paid for the years 2004-2005 and 2005-2006. These two receipts show that the assessment number is 240. First receipt is for an amount of Rs.4,412/- and second receipt is for Rs.43/-. This would show that a lump sum amount of tax was paid in 2004-2005 though the annual tax is Rs.43/- as seen from the tax receipt for 2005-2006. However subsequently an application is moved seeking leave of this Court to file additional documents. Along with WPMP No.21548 of 2007 petitioners filed third party affidavits, Xerox copy of ration card and two house tax receipts. The ration card would show that first petitioner is resident of House No.4-189, but there is no document to correlate these two house tax receipts. Be that as it is, tax receipt dated 21.9.1996, which is filed subsequently, shows that assessment number is 276. Similar is the case with tax receipts dated 14.2.1999. Therefore, there are two sets of tax receipts with different assessment number and one ration card showing the house number, which cannot be correlated to the tax receipts. The Sarpanch of the Gram Panchayat alleged in the counter affidavit that when the MRO conducted enquiry, Bill Collector stated that the petitioners managed to get the house tax receipts from him. In the reply affidavit filed before this Court on 07.8.2007 this is not specifically denied. This brief discussion would show that it is not possible to record any definite finding as to whether the petitioners are in possession of the disputed lands and/or whether they have thatched house or asbestos roofed shed at the disputed place. This needs further enquiry by the competent authority.

Whether poramboke lands and PWD canal poramboke of irrigation system vest in Gram Panchayat? Section 56 of the Act deals with maintenance of irrigation works constituted in Gram Panchayats. This provides for transfer to any Gram Panchayat by the Government the protection and maintenance of any village irrigation work, the regulation of turns of irrigation, or distribution of water from any such irrigation work. Under subsection 1(b) of Section 56 of the Act, minor irrigation tanks vest in the Gram Panchayat. Secondly even when the fishery rights are exercised by the Gram Panchayat in respect of minor irrigation tanks, such powers are to be exercised subject to Section 80 of the Act. All public water courses, springs, reservoirs, tanks, wells and such other water works used by the public erected or laid at the cost of Gram Panchayat vest in the Gram Panchayat under its control. Proviso to Section 80(1) of the Act declares that the power of the Gram Panchayat to control the water courses, water bodies etc., brought into existence at their expense, shall not apply to a work of irrigation or to any adjacent land pertaining to any such work. Therefore, unless

there is valid transfer under Section 56(1) of the Act by the Government to Gram Panchayat, the Gram Panchayat cannot have any right over the land classified as canal poramboke. When the canal poramboke is encroached or the said land is required for the Gram Panchayat, remedy of the Gram Panchayat is to approach Irrigation Department for necessary permission or approval of their action. Whether or not the petitioners were in possession of the land, which is part of PWD canal poramboke, the Gram Panchayat should necessarily approach the concerned in the Irrigation Department.

Section 58 of the Act speaks of vesting of porambokes in Gram Panchayats. A puntha poramboke is a passage. Therefore, on plain reading of Section 58(1) of the Act, a puntha poramboke as such does not vest in Gram Panchayats but as per Section 53 of the Act, all public roads in Village other than National Highways, State Highways and roads in Zilla Parishads and Mandal Parishads shall vest in Gram Panchayats together with payments and materials provided therefor. As per proviso to Section 53(1) of the Act, it shall be within the purview of Gram Panchayat to remove encroachments on any road other than National Highways. From a reading of Sections 53 and 58 of the Act together, it would be reasonable to conclude that a puntha poramboke does not as such vest in the Gram Panchayat and necessarily Gram Panchayat has to approach MRO for evicting encroachers. In this case, admittedly such steps were not taken and therefore it must be observed that even if the petitioners are to be evicted from the land, which is allegedly in their possession, on which they allegedly raised a shelter, the Gram Panchayat has to follow necessary procedure keeping in view the observations made hereinabove. Till such action is taken, if the petitioners are in possession of the land as alleged, they cannot be dispossessed.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

August 09, 2007
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